

**Town of Webster / Zoning Board of Appeals
Minutes of the Meeting
July 8, 2015**

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TOWN CLERK'S OFFICE

Attending: Board members – Mathew Fitton, Donald Malo, Ronald Mathieu, Daniel Cournoyer, and Associate Members Jason Piader and Mike Fafard
John J. Goldrosen, Esq. – Town Counsel
Theodore Tetreault – Building Commissioner
Meagen Donoghue – Planner/Clerk

Absent: Board member– Edward Doering

Meeting Called to order at 6:00 p.m.

Location: Police Station Community Room

Mr. Fitton proposed that the Board move Other Business to the beginning of the meeting. Mr. Cournoyer made a motion to move Other Business to the beginning of the meeting. Mr. Mathieu second. Vote: unanimous.

Mr. Fitton proposed authorizing the Chair to be the sole signatory on all ZBA documents. Mr. Goldrosen discussed the reasoning. Ms. Donoghue stated that she spoke to the Town Clerk who reiterated what Mr. Goldrosen conveyed. Mr. Cournoyer made a motion to have the Chair sign all future documents. Mr. Fafard second. Vote: unanimous.

Mr. Piader asked Town Counsel how to go about amending the Zoning Bylaws to bring them into accordance with Chapter 40A. Mr. Goldrosen suggested that the Board review the Town's Zoning Bylaws and compare them with the provisions of Chapter 40A and then work with the Engineering & Planning Office to prepare an article proposing the change(s) at Town Meeting.

Mr. Fitton asked to reorganize the Board at the next meeting; noting it should be done annually. Mr. Cournoyer made a motion to discuss Board reorganization at the next meeting. Mr. Malo second. Vote: unanimous.

6:05 p.m. Public Hearing – Special Permit & Variance, 32 West Wind Drive, Todd Pihl

Mr. Fitton opened the public hearing at 6:05 p.m. Attorney Robert Finnegan, representing the applicant Todd Pihl, distributed and reviewed a packet which included two letters of support from abutters (24 West Wind Dr. and 40 West Wind Dr.); a letter of support from the current property owner's Attorney John Dupont, photos of the property's current state; and an artist rendering of the proposed structure. Mr. Finnegan also referred to the Gale vs. Gloucester case that Town Counsel John Goldrosen spoke of at the May 26, 2015 meeting. In doing so, Mr. Finnegan explained that the case is the standard of the law which looks to see if a project is substantially more detrimental than the current nonconforming structure. He further expressed his opinion that 32 West Wind fits within these parameters. Mr. Finnegan also stated that his client would address and abate all issues that are currently present at the site including asbestos, exposed wires, and buried burned oil tank. He noted that there would be minimal detrimental impact on the site and the applicant will be working with the Town to go through proper

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permitting procedures. Lastly, Mr. Finnegan noted that the Board has consistently voted to grant Special Permits for all similar cases in the past (Mr. Finnegan provided photographic examples). Attorney Mark Erlich, representing abutter Mark Sroclenski, referred to the original decision from May 18, 2015 and stated the Board should follow the Zoning Bylaw which indicates projects enlarged over 25% of the original building shall not be voted in favor of. Mr. Erlich also said the project would be detrimental because of the size of the building on the property relative to the over-all cottage feel of the existing houses along the road. Mr. Erlich noted that the original vote actually enhances MGL 40A and the Board needs to follow the statute and bylaw. He noted that the persons who provided letters supporting the project were not direct abutters.

Mr. Goldrosen explained that MGL Chapter 40A, Section 6, as interpreted by the courts, gives special protection to pre-existing, non-conforming residential structures, and that the Bylaw should be interpreted to be consistent with the statute. He noted because of this, the application only needed a Special Permit instead of the additional Variance because Mr. Pihl's proposed project was not creating an additional non-conformity. Building Commissioner Ted Tetreault acknowledged and explained how the current property was non-conforming. Mr. Goldrosen further explained that the decision on the Special Permit should be based on whether or not the project is substantially more detrimental to the neighborhood than the existing structure, based on the application and the evidence received at the hearing by the Board. Mr. Erlich expressed that the applicant was looking to extend the property 14 feet towards the water. Mr. Goldrosen noted that if the increase was in an existing non-conformity, it fits within the parameters of *Gale v Gloucester*, which interpreted 40A.

Mr. Sroclenski noted that if the project were to go forward, his family, including his wife and two daughters, would be negatively impacted by construction, lack of privacy, and obstruction of his lake view. He further noted that the project would be so close to his property that his daughters were in danger of falling snow, ice and any other debris from the roof covering the area that they consistently play in. Mr. Erlich noted how close the building was to the property lines, and questioned how it could be built without the construction encroaching on other properties.

Mr. Fitton asked if there was any further discussion. Mr. Dupont, the attorney for the property owner stated his client supports the project and if the project is denied, it would directly impact the price of the property.

Mr. Cournoyer made a motion to close the hearing. Mr. Mathieu second; vote unanimous.

Mr. Cournoyer made a motion to add associate member Michal Fafard to participate in the vote, so as to have five members and associate members voting on the application. Mr. Mathieu second; vote: unanimous.

Mr. Fitton asked if someone would like to make a motion to grant a Special Permit to relieve the 25% regulation. However, Mr. Goldrosen clarified the vote stating that under 40A, the requirement for relief from the 25% regulation in Section 650-28 of the Bylaw was not

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applicable to a single or two-family residential structure. Instead, to approve the project, the Board needed to make a finding that the project was not substantially more detrimental to the neighborhood than the existing structure.

Mr. Cournoyer made a motion to grant the Special Permit because the project was not substantially more detrimental to the neighborhood than the existing structure. Mr. Fafard second. Vote: 3 yeas (Fitton, Cournoyer, and Fafard), 2 nays (Malo and Mathieu). Since four votes in favor are required to approve a Special Permit, the Special Permit was denied.

Mr. Malo stated he voted against the proposed project because he thought it was detrimental to the neighborhood. He noted it was because of the size of the proposed structure and it did not conform to the rest of the cottage-like feel of the neighborhood. Even if the 25% limit on enlargement of a pre-existing structure was not binding for a residential structure, the standard indicated the intent of the Bylaw as to what would be substantially more detrimental to the neighborhood than the existing structure.

Mr. Mathieu voted against, but did not provide a reason for his decision.

Mr. Finnegan stated that he heard that one of the Board members had an expired appointment and asked to identify themselves. Mr. Fitton acknowledged this and Mr. Mathieu declared that it was his appointment that expired. Mr. Goldrosen expressed his opinion that a Board member whose term has expired but who has not been replaced continues to serve in a holdover capacity and is eligible to participate in the Board's decisions until a new appointment is made. Mr. Malo concurred that this has been the past practice of the Board.

6:50 p.m. Public Hearing – Variance, 4 Leboeuf Lane, Josh Collins

Mr. Fitton requested to recuse himself from the case as his parents were abutters to the applicant and asked for Vice Chair Malo to take over the meeting. Mr. Malo opened the public hearing at 6:50 p.m. The wife of the applicant and contractor were present to provide the scope of work which included reducing the side-yard setback from 15 feet to 10 feet with an addition to the left side of the house.

Mr. Piader asked the applicant's representatives if the project was a substantial financial hardship. The applicant's wife responded that their family is expanding and they wanted the house to be their "forever home." After researching where to build an addition, it was determined that to build up was a financial hardship. Instead, it was more cost-effective for the applicant to build to the side.

Mr. Cournoyer made a motion to add both associate members, Michael Fafard and Jason Piader to make the vote.

Abutters to the applicant's property noted that they were originally concerned when they received the public notice as they were not sure what was being proposed. Yet after hearing the case, they were satisfied with the project.

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Mr. Cournoyer made a motion to grant a Variance to reduce the side-yard setback because of financial hardship and it is not substantially more detrimental to the neighborhood. Mr. Piader second. Vote: unanimous.

Signatures

Mr. Cournoyer made a motion to approve the minutes. Mr. Mathieu second, vote: unanimous.

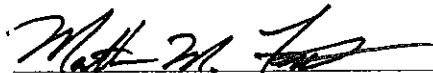
Meeting adjourned at 7:05 pm

Next Meeting Date: TBD

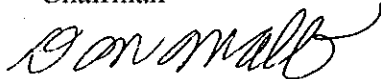
Respectfully Submitted,
Meagen P. Donoghue, MRP
Planner/Clerk

All correspondence, reports, plans
and applications can be viewed at
the Town of Webster Engineering
Office, 350 Main St, Webster MA

Minutes Approved:


Chairman

Date: 9/21/15



9/21/15